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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No._____

MARK G. ALBERT, et al.,
Petitioner,

v.

CHEMICAL LEAMAN TANK LINES, INC., a corporation, and RYDER TRUCK LINES, INC. (TANK LINES DIVISION), *a corporation,*
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Mark G. Albert, et al, hereinafter referred to as Albert, prays that a writ of certiorari issue to review (1) the judgment of the United States Court of Appeals for the Fourth Circuit, entered April 17,

1973 in case No. 72-1972, styled Mark G. Albert, et al, appellant, vs. Chemical Leaman Tank Lines, Inc., a corporation, and Ryder Truck Lines, Inc., (Tank Lines Division,) a corporation, appellee, wherein the Fourth Circuit affirmed the judgment of the United States District Court of the Southern District of West Virginia, at Charleston, West Virginia which filed a memorandum order sustaining the defendants motion for summary judgment.

OPINIONS BELOW

The district court's opinions, appears here in the appendix at page A-1, and is unreported. The opinion of the Circuit Court appears at page A-13 and is also unreported.

JURISDICTION

The judgment of the Fourth Circuit was entered April 17, 1973 and this petition for certiorari is filed within 90 days. This Court's jurisdiction is invoked under 28 U.S.C.A. 1254 (1).

QUESTIONS PRESENTED

Whether there was sufficient evidence to justify the trial court in granting a motion for summary judgment involving the rights of these petitioners to be fairly represented before a union-management joint committee on the questions of seniority and lost wages.

STATEMENT OF THE CASE

This is a civil action instituted by Mark G. Albert and other truck drivers and mechanics all of whom were employed by Ryder Tank Lines, sometimes re-

ferred to hereinafter as Ryder, a trucking company which merged with Chemical Leaman Tank Lines, Inc., hereinafter referred to as Chemical, also a trucking company.

Following certain negotiations between Ryder and Chemical during the summer of 1966, the Interstate Commerce Commission, hereinafter referred to as the I.C.C., granted certain temporary authority pending final determination of the joint application of the two companies whereby Chemical was to absorb a portion of the business entity of Ryder. The absorption was entitled upon the application and so designated upon the I.C.C. Docket as a "purchase."

In early 1967, a dispute arose between the employees of the two companies as to whether Ryder employees should go to the foot of the seniority list or be dovetailed in with the Chemical employees.

According to the provisions of the collective bargaining agreement, officially known as the "West Penn Haul Agreement," the former method of seniority designation was applicable in case of a "sale" and the latter when there was a "merger," and a decision of the I.C.C. would be considered as presumptive proof of the nature of the transaction; that in certain situations not covered by the agreement or a different treatment of the problem was necessary, the employer Union and joint committee could mutually agree to a disposition of the seniority problem; and, that a decision by the majority of any panel of the joint committee would be final. The pertinent portion of this contract is set out hereinbelow.

"6(b) (Seniority Rights) of the labor contract between the parties hereto states in part as follows:

(b) Mergers and Acquisitions or purchases: The following rules shall govern the exercise of seniority rights by employees of the Employer and the employees represented by the Local Unions party to this Agreement but only in the specific situations set forth below.

(1) Merger: When two or more companies merge their operations then the employees of the respective companies shall all be placed on the seniority roster in the order of the earliest date of hire of the employees with their respective Employer.

(2) Acquisition or Purchase: When one company acquires or purchases control of the business of another company then the employees of the company so acquired or purchased shall be placed at the bottom of the acquiring or purchasing company's seniority roster in the order of their payroll or company seniority with the former company.

(3) Proof as to Nature of Transactions: The decision of the Interstate Commerce Commission or State Regulatory Body shall be considered as presumptive proof as to the nature of the transactions relative to mergers, purchases, acquisitions, and or other combinations of two or more contract or common carriers.

In this posture the matter was submitted to the joint committee on February 8, 1967. A Pre-hearing Information compiled by McDonald Smith, Secretary-Treasurer of Local 175, submitted to the joint committee requesting interpretation of the agreement con-

cerning seniority rights of Ryder employees, refers to an order of the I.C.C. dated September 21, 1966 in "No. MC-F 9483 Chemical Tank Lines, Inc. purchases (portion) Ryder Tank Lines, Inc. (Tank Line Division)" and asks if that order is to be considered presumptive proof as to the nature of the transaction relative to mergers, purchases, acquisitions, etc.," under Article 8, Section 6 (b) (3).

On the same day the Pre-hearing Information was received by the joint committee, the committee consisting of five members from the Union and five from the Management, made its decision on February 8, 1967, that based on the evidence presented under Article 8, Section 6 of the agreement, the transaction was a purchase and the Ryder employees were placed at the foot of the seniority list. The effect of this decision put 91 Ryder drivers below 192 Chemical drivers senior only to 10 drivers of Chemical classified as extras and put all Ryder mechanics below 67 mechanics on Chemical's seniority list thereby causing Ryder drivers and mechanics with seniority dating back to January 1952 to be placed below Chemical drivers and mechanics hired as recent as December 1966.

When the matter was considered for final decision by the I.C.C. the aggrieved Ryder employees appeared in that proceeding and charged the joint committees' decision as being erroneous and contended they were ineffectively represented at the hearing. Local 175 also appeared, but in support of its earlier position taken by the joint committee and cited several cases to the I.C.C. for the proposition that the matter of seniority was not one for the commissioner to decide but rather

a question for the National Labor Relations Board to determine.

In its decision of September 5, 1968, the I.C.C. remarked that the transaction was docketed and entitled a "purchase" in view of the initial statement in the application, but, that such procedure was purely administrative and not a determination of the nature of the transaction. The Commission rejected Chemical's effort to distinguish the transaction from a merger as meaningless, and, said that whether the position taken by Chemical was to support its own employees or for some other purpose, its efforts were not supported by the evidence. Moreover, the I.C.C. held it was "clear that Local 175 acted on insufficient and incorrect information in arriving at a decision as to the nature of (the) transactions;" it said that the Ryder drivers have a right to expect the correct application of the rules which their representatives have negotiated with Chemical; and, that since those rules require a dovetailing in transactions of the type involved here, their seniority rights must be dovetailed as a condition to the I.C.C.'s approval of the transaction.

Following the decision of the I.C.C., nothing further was done on the matter until January 13, 1969 at which time a Second Pre-hearing Information was filed with the Joint Committee by Local 175 in behalf of all previous Ryder employees. The position of the Union as stated on the information was that "in a previous hearing Joint Area Committee ruled that the nature of the transaction was a "purchase," but "the I.C.C. has now changed the position from a purchase to a merger and gave Chemical Leaman Tank Lines, Inc. 35 days to correct the seniority list which (it) failed

to do." The Union requested that Chemical be directed to comply with the contract and pay all loss of earnings.

By a unanimous decision dated January 20, 1969, the Joint Committee decided to hold the matter in abeyance pending a final decision of the I.C.C. Apparently a part of the delay was due, at least in part, to a petition for reconsideration filed with the I.C.C. by the Eastern Conference of Teamsters which challenged the right of the I.C.C. to interpret the collective bargaining agreement. That petition was denied by the I.C.C. on March 13, 1969, and almost three months after the denial Local 175 gave notice to all employees of Chemical and Ryder, by letter dated June 6, 1969, of a hearing to be held June 16, 1969, before the committee concerning the issues including seniority.

By decision dated June 16, 1969, the Joint Committee held that "In view of the fact that the I.C.C. has ruled in a final decision that the transaction . . . is a merger, this decision of the I.C.C. . . . is a presumptive proof of the nature of the transaction within the meaning of . . . the agreement." Although the Committee ordered seniority to be dovetailed it denied the claim for lost earnings "because of the unique circumstances of this case, and because the I.C.C. for the first time in a case of this kind attempted to interpret the labor agreement," and because the Joint Committee had in its previous decision in good faith relied on the application of the employees and the decision of the hearing examination of the I.C.C.

This action as initiated by the aggrieved Ryder employees under Section 301(b) of the National Management Relations Act alleges that the violation of the

collective bargaining agreement was malicious and in wanton disregard of the rights of the plaintiffs.

REASONS FOR GRANTING THE WRIT

The petitioners urge that the record clearly shows that through the joint efforts of the respondent Chemical and Local Union 175, the petitioners have not been fairly represented before the Joint Committee in matter of seniority and for loss of earnings brought about by Chemical's breach of the collective bargaining agreement, and under these circumstances, the Courts not only have jurisdiction but must review the merits of the Joint Committee's decision.

The opinion of the I.C.C. of September 5, 1968 exposes the dedication of Chemical and Local 175 to serve only Chemical's employees. Both Chemical and the Union opposed actively the interests of the petitioners and neither had any reason to do so except Chemical's own pecuniary interest, and to protect its own employees and the Union's obvious singular concern for the Chemical employees. Chemical's position in this regard would be expected as its employees were the ones who stood to lose by a dovetailing of seniority rights and is therefore proper to assume that Chemical was motivated to designate the initial I.C.C. application as a purchase in order to obtain an order of the I.C.C. to this affect and thereby satisfy the presumptive proof provision of Article 8, Section 6 (3) of the Collective Bargaining Agreement. This result was accomplished by the mere docket designation of the preliminary orders of the I.C.C. which describes the transaction as a "purchase" but this was a sufficient decision in the eyes of the Joint Committee to justify its first

decision of February 8, 1967. No other evidence was submitted to the Joint Committee, and had the matter ended at that point perhaps the general rule of "judicial hands off" may have been applicable. However, this was not the case.

When the matter was considered by the I.C.C. and the Ryder employees appeared in that proceeding to protest their interest, Chemical continued to further the interest of its employees and Local 175 also appeared insisting that the I.C.C. had no jurisdiction to consider the interests of the Ryder employees. Failing to prevail in this respect, the Eastern Conference of Teamsters petitioned the I.C.C. for reconsideration of the unfavorable decision of September 5, 1968, contending that the I.C.C. had no jurisdiction to interpret and apply the collective bargaining agreement and that the agreement did not require a dovetailing of seniority rights "even where there is a merger."

Although the petition for reconsideration states that Local Union 175 did not intend to participate any further in the case, the plaintiffs submit that the Eastern Conference of Teamsters is the fountainhead of Local 175 and that Local 175 was not relieved of its duty to represent plaintiffs' interest in the controversy.

Despite the decision of the I.C.C. which stated that it was clear that Local Union 175 acted on insufficient and incorrect information in arriving at a decision as to the nature of the transaction, Local 175 took no action whatsoever until January 7, 1969, it filed a Second Pre-hearing Information in behalf of all previous Ryder employees" alleging a violation of the collective bargaining agreement and requesting that Chemical comply with the same and pay all loss of

earnings. By its unanimous decision of January 20, 1969, the Joint Committee decided to hold the matter in abeyance pending a final decision of the I.C.C.

The letter of Local 175 dated June 6, 1969, notifying the employees and members of Chemical and Ryder of the joint committee meeting to be held June 16, 1969, analyzes the facts to be simply: That the Joint Committee had acted on the joint application of the employees and the I.C.C. authority which initially determined the transaction to be a purchase; that the I.C.C. hearing examiner found the transaction to be a purchase and the Labor Relations issue to be without merit; that not withstanding the absence of an appeal to that decision, that I.C.C. reviewed the hearing examiner's decision and without further agreement of the parties not only ruled the transaction was a merger but also proceeded to interpret the collective bargaining agreement and order seniority of the two classes of employees to be dovetailed. The tenor of the letter signed by the Secretary-Treasurer of Local 175 is a strong clarification of the Union's horror that any agency short of the N.L.R.B. would question its determination of its members' rights under a collective bargaining agreement however wrong it may be. Moreover, the letter clearly indicates how the Union felt about the matter of seniority and it attempts to justify its mistreatment of the plaintiffs by basing the initial decision of the Joint Committee on the statement that the "hearing examiner found the transaction and its effect on Ryder drivers . . . was one properly to be decided by the N.L.R.B."

There was absolutely no reason for Local 175 to set forth information . . . erroneous information . . . in

the notice of hearing unless it was a public announcement that the Union was highly vexed with I.C.C.'s interference with the matter and that the Union's side of the Joint Committee was not going to favorable consider the plaintiffs' claim for lost earnings. Any other interpretation of the notice would be absurd.

Apparently the Joint Committee had the same idea in mind when it unanimously denied the claim for lost earnings by its decision of June 16, 1969, as the reasons given by the Joint Committee for the denial were that the Committee had acted in good faith on the I.C.C.'s temporary authority and the findings of the I.C.C. hearing examiner, "although it is interesting to note that the Joint Committee's decision of February 8, 1967;" that the case was unique; and, that the I.C.C. had for the first time attempted to interpret a collective bargaining agreement.

Although the decision did order a dovetailing of seniority to commence June 6, 1969, this decision came about two and one-half years after the Joint Committee's initial decision of "entailing" and about a year after the I.C.C. had interferred to protect the rights of the plaintiffs.

Although the theory relied upon by the defendants that the Court should not consider the merits of the Joint Committee's decision, may be the general rule of law, the rule is subject to at least two main expectations:

1. Where the aggrieved parties show a breach of fair representation.

   (Vaca v. Sipes, 386 U.S. 171, 87 S. Ct. 903, 17 L. Ed. 2d 842 (1967))

2. Where the private procedure used to determine the question is not adequate to decide the question fairly and fully.

(Bieski v. Eastern Automobile Forewarding Company, Inc. 396 F. 2d 32 (1968))

With regard to the first exception, *Vaca* v. *Sipes*, an action by a Union member against the Union for its failure to arbitrate a grievance, the Court said that a union was obligated to serve the interest of all its members without hostility or discrimination for any of its members and to exercise its discretion with complete good faith and honesty and to avoid arbitrary conduct; that because the contractual remedy are often controlled by the union and employer, they may prove unsatisfactory and unworkable for an individual grievant; and, that a wrongfully discharged employee may bring action against his employer in the face of a defense based upon the failure to exhaust contractual remedies, provided the employee can prove that the union as bargaining agent breached its duty of fair representation in its handling of the employee's grievance.

The second exception is succinctly set out in the case of *Bieski* v. *Eastern Automobile Forwarding Company, Inc.*, supra.

That case, Eastern Auto, hereinafter referred to as Eastern, sold certain assets to M. & G. Company, hereinafter referred to as M & G, and went out of business. Plaintiffs, employees of Eastern, contended that they should have been hired by M & G, with dovetail seniority. The Collective Bargaining Agreement provided that in the event of an absorbtion or merger, seniority

of employees absorbed or effected would be determined by mutual agreement between employer and Union involved and any controversy would be submitted to grievance procedure by a Joint Area Committee composed of an equal number of Union and employers who were parties to the agreement and that a decision by a majority of the committee was declared "final and binding on all parties involved."

Both groups of employees were represented by Local 107 whose business agent appeared before the joint committee but took no position, remaining neutral. By unanimous decision the committee ruled there was no acquisition, purchase, or merger within the meaning of the agreement and M & G therefore had no duty to recognize the seniority rights of former Eastern employees. Eastern employees relief for injunction was denied by the district court, 231 F. Supp. 710: the denial was affirmed by the circuit court of appeals as being premature, 354 F. 2d 414; and subsequently the District court sustained summary judgment adverse to the Eastern employees.

Upon appeal by the Eastern employees, the Circuit Court defined the precise question to be whether "the Federal Courts can reverse the decision of a Joint Committee which has acted pursuant to a labor agreement, ... which declared that the Joint Committee's decision would be 'final and binding.' Rejecting the contention that reviewability was limited to fraud and deceit or union misrepresentation the Court said:

"The question of judicial review of a 'final' private decision should turn on the adequacy of that private decision under the contract in terms of controversy

presented. If the court is convinced both that the contract procedure was intended to cover the dispute and, in addition, that the intended procedure was adequate to provide a fair and informed decision, then review should be limited to cases if fraud or deceit, or instances of unions in breach of their duty of fair representation."

"If, however, the private decision complained of is a 'jurisdictional' one — that a certain dispute will not be considered on its merits by the private decision maker — then the court is a proper forum to review this decision on the basis of its analysis of the contract entered into by the parties."

Although the Circuit Court affirmed the District Court's finding that the Eastern employees had not shown a breach of fair representation by the union in remaining neutral as to justify judicial review of the joint committee's decision. It nonetheless held the decision "must be rigorously scrutinized for reasonableness" because:

"The private decision procedure under this agreement contemplates an adversary proceeding with an effective conflict of positions over a seniority dispute, 'effective' meaning opposition between parties having some voice in the decision of the Joint Committee. This essential element was lacking in this case and calls into doubt the reasonablness of the Joint Committee's decision regardless of which contract provision empowered the determination. If Local 107 was genuinely neutral, the management half of the Joint Committee was most probably not. The more total seniority its employees had (and dovetailing would probably in-

crease such seniority), the more M & G would have to pay in certain seniority-based fringe benefits."

The Court in Bieski further said, that the cause of the Eastern employees had practically, an extremely small chance of success; that no decision maker with any power would take their side; that the Eastern company had gone out of business and there was little chance it had appeared and forcefully argued for its former employees; and, that the argument in favor of the Eastern employees was by persons hardly qualified to compete with experienced businessmen, lawyers and professional union agents.

In holding the decision of the joint committee to be unreasonable and arbitrary, the Court said that if, when the matter went back the "Union would again reverse its position to one of neutrality, it ought to make that neutrality genuine by either deadlocking the Joint Committee or, at the very least seeing that the appellants' (Eastern employees) position is presented by experienced and competent representative."

Clearly the facts of the principal case show the decision of the committee is reviewable because of misrepresentation on the part of the union, which took an active interest adverse to the Ryder employees. The record undeniably shows that union favored Chemical employees in the proceedings before the joint committee; that it took an adverse and hostile position against the Ryder employees in the proceeding before the I.C.C.; that it was reluctant to act, or to insist on decisive action in the matter of seniority until about a year after the I.C.C. rendered its decision in September 1968.

A more obvious case of discrimination is inconceivable. Here was a union confronted with the serious matter of seniority rights of its members. Jobs were at stake. Family livelihoods depended on the outcome. Members of the union hired as early as January 1952 stood to lose their jobs to other members hired as recently as December 1966. Surely such an important matter should not have been decided by "unanimous" decisions of the joint committee but should have been decided by "impartial" arbitration according to Section 6.5 of the collective bargaining agreement, and, this could have been done had the union side of the committee deadlocked the decisions. Petitioners' submit that the last decision of the committee of June 16, 1969, did not consider the merits of their claim for lost earnings, as the claim was denied because the case was "unique" and the I.C.C. was somehow responsible for all the trouble. Even after two and a half years the committee was still insisting on the accuracy of its decision of January 1967 despite the fact that the initial decision was based on a conclusion supplied by the companies and without any other evidence.

The respondents' would leave the impression that their, especially Chemical's, skirts are clean. That they merely did what the committee directed and were afraid to do otherwise else strike was imminent. It is interesting to note, however, that Article 9 of the agreement, regarding vacations, allows up to four weeks vacation to an employee who has more than eighteen years employment and provides for vacation pay based upon tenure. Obviously then, Chemical had a substantial pecuinary interest in seeing that Ryder employees hired as early as 1952 were placed on the employment schedule below Chemical employees hired as recent as

December 1966. Moreover, the older Ryder drivers would derive pension benefits earlier. These matters and many others, too obvious to require setting forth herein demonstrate the persuasive primary influences surrounding the joint committee's decision.

The petitioners' contend that in any event the motion of the respondents' for summary judgment is premature. The case is now before the Court as a 301 action and it raises ample question of fact as to preclude summary judgment. Certainly the procedure employed in this matter before the joint committee, and the union misrepresentation have denied the plaintiffs their rights under the collective bargaining agreement.

In the Memorandum Order, the District Court appeared troubled by the fact that the affidavits attack the integrity and fidelity of the Union while the suit was filed against the employer only. Vaca v. Sipes, supra. with clarity explains that the damages for a breach of contract are attributed to the employer and that the "employer" can not "hide behind the Union's wrongful failure to act."

The decision of the Joint Committee's denial of back wages to the Ryder employees on the basis that it was a unique situation is hardly in keeping with the spirit of Vaca v. Sipes, that "a Union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory fashion."

The affidavits of Charles Ray Harper, Hershal Miller and Richard McDonald (App. Page 46), employees of Ryder clearly demonstrate the attitude of Eugene Carter, President of Teamsters, Chauffeurs, Ware-

housemen and Helpers towards rights of these minority Ryder drivers.

The respondent-employers, Ryder and Chemical, wrongfully designated their contract a purchase. The contract was so transparently a merger that the I.C.C. compelled the belated dovetailing as a condition of approval. Justice surely would not permit the plaintiffs to suffer great and pecuniary loss because all now contends it was done innocently and the lost wages the petitioners suffered was a remediless injury.

The Federal Court should review a decision of a joint committee where evidence shows Union did not fairly represent its members, as cited in *Humphrey* v. *Moore*, 375 U.S. 335, 84 S. Ct. 363, 11 L. Ed. 2d (1964)).

In *Poller* v. *Columbia Broadcasting System, Inc.* 368 U.S. 464, 82 S. Ct. 486, 7 L. Ed. 2d 458 (1962) and *Price v. International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America*, 46 F.R.D. 18 (1969), a motion for summary judgment must be denied if the record shows there is a genuine issue as to a material fact.

CONCLUSION

For the reasons assigned petitioner, Albert, prays that the writ of certiorari should be granted and the writ issue to review the judgment order entered in case No. ....., as aforesaid.

Petitioner intends to urge each of the questions presented, even if not specially argued herein.

Respectfully submitted,

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APPENDIX

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for hearing in response to a motion for summary judgment served and filed by the defendants, Chemical Leaman Tank Lines, Inc. (hereinafter called "Chemical") and Ryder Truck Lines, Inc. (hereinafter called "Ryder"). Based upon the pleadings and affidavits on file, and after having carefully considered the briefs and oral arguments of all parties, we set forth hereinafter, as findings of fact, those material facts as to which there is no genuine dispute in the record, as well as our conclusions of law relating thereto. In view of those undisputed facts, and of the applicable federal labor law, we conclude that defendants Chemical and Ryder are entitled to judgment as a matter of law against all plaintiffs. Detailed conclusions of law follow the Findings of Fact.

FINDINGS OF FACT

1. The plaintiffs are twelve individuals.

2. The defendant Chemical is, and was at all relevant times, an interstate motor carrier engaged in the transportation of liquid and dry bulk products in tank trucks.

3. Defendant Ryder is, and was at all relevant times, an interstate motor carrier also engaged in the transportation of liquid and dry bulk in tank trucks.

4. Each of the plaintiffs was employed by Ryder.

5. With the exception of plaintiffs Howard F. Mack and Calvin H. Pauley, the plaintiffs were members of a bargaining unit while in the employ of Ryder which was represented for collective bargaining purposes by Teamsters Local Union No. 175 of Charleston, West Virginia (hereinafter called the "Union.")

6. A collective bargaining agreement (hereinafter called the "Agreement"), operative from December 2, 1965 through October 31, 1969, controlled the wages, hours, and working conditions of all plaintiffs save for Mack and Pauley. (The 10 plaintiffs covered by that Agreement are hereinafter called the "Bargaining-unit plaintiffs.")

7. Although the sole and exclusive basis for the claims in this action is the Agreement, plaintiffs Mack and Pauley were not in the bargaining unit to which the Agreement applied, and were not covered at any relevant time by the Agreement.

8. In June, 1966, Chemical had a tank truck terminal at Institute, West Virginia. At the same time, Ryder had a tank truck terminal at Nitro, West Virginia. The Chemical Institute terminal was approximately 9 miles from the Ryder Nitro terminal.

9. The Agreement contains the following provisions:

Section 6.2 Grievance Procedure

All grievances or disputes involving any controversy, complaint, dispute or misunderstanding arising as to the meaning, application or

observance of any provisions of this Agreement shall be handled in the manner hereinafter set forth. It is understood that any controversy, complaint, dispute or misunderstanding not relating to the meaning application or observance of any provisions of this Agreement may also be the subject of a grievance but shall not be the subject of arbitration. It is agreed that all matters pertaining to the interpretation of this Agreement must be referred directly to the Joint Committee, provided that if a grievance has not been filed the matter shall not be subject of arbitration until a grievance is filed.

Section 6.3 Joint Committee

The Unions and the several Employers who are signatories to this Agreement shall organize, for the duration of this Agreement, a Joint Committee to be known as West Virginia-West Penn Area Tank Haul Joint Committee (hereinafter referred to as the "Joint Committee"). Any panel of the Joint Committee hearing a case shall consist of a minimum of three (3) representatives of the Employers and three (3) representatives of the Union, unless otherwise mutually agreed, but at all times shall consist of an equal number of designated representatives of the Employers and the Union.

It shall be the function of the Joint Committee or a panel thereof to settle disputes and grievances which cannot be settled in accordance with Section 6.2. The Joint Committee shall meet regularly and shall formulate rules of procedure to govern the conduct of its proceedings. A decision by a majority of any panel of the Joint Committee shall be final and binding on the parties and employees involved. Failure of either party involved to comply with any final decision

of or to submit to the jurisdiction of the Joint Committee shall give the other party the immediate right to all legal and economic recourse.

Section 8.6 Seniority Rights

(a) The Employer shall not require, as a condition of continued employment, that an employee purchase truck, tractor and/or tractor and trailer or other vehicular equipment, or that any employee purchase or assume any proprietary interest or other obligation in the business.

(b) Mergers and Acquisitions or Purchases: The following rules shall govern the exercise of seniority rights by the employees of the Employer and the employees represented by the Local Unions party to this Agreement but only in the specific situations set forth below.

(1) Merger: When two or more companies merge their operations then the employees of the respective companies shall all be placed on one seniority roster in the order of the earliest date of hire of each of the employees with their respective Employer.

(2) Acquisition or Purchase: When one company acquires or purchases control of the business of another company then the employees of the company so acquired or purchased shall be placed at the bottom of the acquiring or purchasing company's seniority with the former company.

(3) Proof As To Nature of Transactions: The decision of the Interstate Commerce Commission or State Regulatory Body shall be considered as presumptive proof as to the nature of the transaction relative to mergers, purchases,

acquisitions, and/or other combinations of two or more contract or common carriers.

(4) The parties acknowledge that specific situations may arise which may not be covered by the above rules, or in which the parties may feel that different treatment of the problem is necessary. In such situation the Employer, the Unions involved, and the Joint Committee may mutually agree to such disposition of the seniority problems, as in their judgment is appropriate under the circumstances. The Joint Committee shall have the authority to add to or to modify these rules in specific situations presented to it.

10. On June 23, 1966, Chemical made a written agreement to purchase certain equipment and operating rights of Ryder, including tank truck and other equipment based and operating from the Ryder Nitro terminal, and operating rights applicable thereto.

11. At or about the time of the June 23 written agreement, Ryder was subject to a management crisis, and destruction of the Ryder trucking business was likely. Therefore, in order to preserve the subject matter of the June 23 agreement, it was necessary for Chemical to take over the direction and control of the Ryder trucking operation.

12. On July 20, 1966, Chemical and Ryder applied to the Interstate Commerce Commission (hereinafter called the "I.C.C.") for authority (a) to consummate their agreement of June 23, 1966 by transferring title from Ryder to Chemical of the equipment and operating rights subject to that agreement, and (b) for Chemical to lease from Ryder the equipment and op-

erating rights involved in the June 23, 1966 agreement pending the outcome of the I.C.C. proceedings relating to the authority to transfer title to that equipment and those operating rights.

13. On September 12, 1966, the I.C.C. granted Chemical the authority to lease the Ryder equipment and operating rights which were subject to the September 23, 1966 agreement, and thus to direct and control the faltering Ryder business. Chemical exercised this authority to lease on October 2, 1966.

14. By late October or early November 1966, it had become obvious to Chemical that it could not economically operate both the Nitro terminal and the Institute terminal. Thus, the employees and equipment operating from those terminals would have to be amalgamated.

15. Chemical decided that the surviving terminal would be the Institute terminal, and thus operations from the Nitro terminal would be terminated.

16. It further became obvious to Chemical that the amalgamation would cause a labor relations problem involving employees of the Nitro terminal and employees of the Institute terminal for the reason that, whereas before the amalgamation there were two separate seniority systems, after it there would be only one seniority system. Therefore, depending upon the method used by Chemical to bring together into one the two separate seniority systems, it was inevitable that either the Ryder or the Chemical employees would be dissatisfied in that the seniority of one or the other would be impaired.

17. In attempting in good faith to deal with and solve this labor relations problem, representatives of Chemical and the Union engaged in discussions in late 1966. Using Section 8.6 of the Agreement as a guide, they discussed both "dovetailing" and placing the Ryder employees at the bottom of the Institute seniority lists. Those discussions did not produce a solution to the problem.

18. On February 8, 1967, in response to a grievance filed by the Union, Chemical and the Union presented the seniority-list problem to the West Virginia-West Penn Area Tank Haul Joint Committee (hereinafter called the "Joint Committee"). The Joint Committee was constituted as provided for in Article 6.3 of the Agreement.

19. After hearing all sides of the matter, the Joint Committee reached a decision on the grievance and thereupon ordered Chemical to place the Nitro employees, including the bargaining-unit plaintiffs, at the bottom of the pertinent Institute seniority lists when the impending amalgamation took place.

20. On February 11, 1967, Chemical terminated operations from the Nitro terminal, and effected amalgamation of the Nitro and Institute employees and equipment.

21. In connection with that amalgamation, and pursuant to the February 8, 1967 order of the Joint Committee, Chemical placed the Ryder employees, including all bargaining-unit plaintiffs, at the bottom of the Institute seniority lists.

22. On September 5, 1968, the I.C.C. approved the transfer of title contemplated by the June 23, 1966 written agreement, and expressed the view that performance of that agreement would result in a "merger." That I.C.C. decision, however, did not become final until May 5, 1969.

23. On January 20, 1969, in response to a grievance filed by the Union on behalf of all Ryder employees who had seniority rights stemming from the Agreement, and after having fully heard representatives of the Union and Chemical, the Joint Committee decided that it would defer final action on the grievance until after the September 5, 1968 I.C.C. decision became final.

24. On June 16, 1969, after the I.C.C. decision of September 5, 1968 had become final on May 5, 1969, the Joint Committee, constituted in accordance with Section 6.3 of the Agreement, and after having heard representatives of all interested parties, ordered Chemical to "dovetail" Ryder employees into the Institute seniority lists if and when Chemical and Ryder performed their June 23, 1966 agreement. At the same time, the Joint Committee specifically denied the claim by the Ryder employees, including all bargaining-unit plaintiffs, that they were entitled to back pay because Chemical placed them at the bottom of the Institute seniority lists on or about February 11, 1967. That back pay claim denied by the Joint Committee is identical to the claims made by the plaintiffs in this action.

25. Chemical and Ryder performed their June 23, 1966 agreement on or about June 29, 1969.

26. On or about June 29, 1969, in accordance with the Joint Committee order of June 16, 1969, and in response thereto, Chemical "dovetailed" all Ryder employees into the Institute seniority lists.

27. In response to defendants' motion for summary judgment now at bar, the plaintiffs served and filed three affidavits. Those affidavits do not express or imply fraud or deceit by anyone related in any way with Chemical, with Ryder, with the Union, or with the Joint Committee in connection with any subject matter involved in this action, including the hearings before and the decisions of the Joint Committee on February 8, 1967, January 20, 1969, and June 16, 1969, and the performance of the orders stemming from those decisions. Those affidavits further do not express or imply that the Union failed to represent all bargaining-unit plaintiffs honestly, in good faith, and without hostility or arbitrary discrimination.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the subject matter of this action.

2. The Joint Committee had jurisdiction of the subject matter of the grievance heard by it on February 8, 1967 which related to the amalgamation of the Ryder-Nitro and Chemical-Institute seniority lists.

3. By virtue of the Agreement, Chemical had the legal duty—which duty Chemical fully performed—to submit to the jurisdiction, and abide by the decision, of the Joint Committee in connection with the seniority

lists grievance heard and decided by it on February 8, 1967.

4. The decision of the Joint Committee of February 8, 1967 is final and binding on Chemical, Ryder, the Union, and all bargaining-unit plaintiffs, and Chemical had the legal duty—which duty was fully performed by Chemical—on February 11, 1967 to place all Ryder-Nitro bargaining-unit employees, including all bargaining-unit plaintiffs, at the bottom of the Chemical Institute seniority lists.

5. There was not any fraud, deceit, or other conduct which destroyed the finality of the February 8, 1967 Joint Committee decision and which would justify review of the merits thereof by this Court.

6. It follows from the foregoing that, on February 11, 1967, when Chemical placed the Ryder-Nitro bargaining-unit employees, including all bargaining-unit plaintiffs, at the bottom of the Institute seniority lists, it did not breach the Agreement.

7. In view of the fact that Chemical did not breach the Agreement when it placed the bargaining-unit plaintiffs at the bottom of the Institute seniority lists, and in view of the fact that the sole basis for the plaintiffs' claim is that the conduct by Chemical referred to immediately above allegedly was a breach of the Agreement, defendants Chemical and Ryder are entitled to judgment as a matter of law against all bargaining-unit plaintiffs in this action.

8. The Joint Committee had jurisdiction of the subject matter of the grievance heard and decided by it on

June 16, 1969 and relating to the amalgamation of the Ryder-Nitro and Chemical-Institute seniority lists, including the back pay claims of all bargaining-unit plaintiffs in this action.

9. By virtue of the Agreement, Chemical had the legal duty—which duty Chemical fully performed—to submit to the jurisdiction, and abide by the decision, of the Joint Committee in connection with the grievance heard by it on June 16, 1969.

10. The decision of the Joint Committee on June 16, 1969 is final and binding on Chemical, Ryder, the Union, and all bargaining-unit plaintiffs in this action, including that portion of the decision which was the back pay claim of all bargaining-unit plaintiffs.

11. There was not any fraud, deceit, or other conduct which destroyed the finality of the June 16, 1969 Joint Committee decision and which would justify this Court to review the merits thereof.

12. Moreover the decision of the Joint Committee of June 16, 1969 was made in accordance with prevailing principles of law.

13. Plaintiffs Mack and Pauley were not covered at any relevant time by the Agreement, and they therefore did not, and do not, have any seniority rights stemming therefrom.

14. In view of the foregoing, and in view of the fact that the sole basis for the claims by plaintiffs Mack and Pauley is the Agreement, defendants Chemical and Ryder are entitled to judgment as a matter of law against plaintiffs Mack and Pauley.

15. There is no genuine issue as to any material fact.

16. Since there is no genuine issue as to any material fact, and since defendants Chemical and Ryder are entitled to judgment as a matter of law against all plaintiffs, there shall be issued and entered on behalf of defendants a judgment dismissing the complaint and this action, with costs to the prevailing party.

K. K. Hall, Judge

Charles Lockhart, Howard F. Mack, Donald Keith Mallett, Morriston D. Melton, H. C. Miller, Ralph Morton, Richard McDonald, Charles D. McKneely, Calvin H. Pauley, Dana J. Racer, George W. Radford, Robert F. Reed, George F. Sergent, Thomas Ray Shamblin, Roy Lee Thompson, Paul T. Tincher, John F. Vance, Paul N. Williams, Donald R. Wilmoth, Chester Winterstein, and Kenneth Lee Young,

Appellants,

versus

Chemical Leaman Tank Lines, Inc., a corporation, and Ryder Truck Lines, Inc. (Tank Lines Division), a corporation,

Appellees.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 72-1972

Mark G. Albert, Joseph M. Abernathy, Kenner R. Brown, Verner B. Combs, Fred Bailey DeHart, Charles F. Dent, Harry J. Dennis, Elwood E. Dunlap, James Ray Eggleton, Lyle E. Fisher, Wayne E. Gatewood, Charles Ray Harper, D. R. Harris, Harley E. Kessel, Bobby L. Keeling, James A. Keeling, John E. Kenney, R. D. Keeney, Jerrold L. King, Thurston H. Larch, Charles H. Leshon, Herbert M. Likens, Cebert W. Lipscomb,

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. K. K. Hall, District Judge.

(Argued March 6, 1973 Decided April 17, 1973).

Before CRAVEN, RUSSELL and WIDENER, Circuit Judges.

Rudolph L. Di Trapano for Appellants; John J. McAleese, Jr., (Cuniff, Bray and McAleese, Carl F. Stucky and Leonard A. Jaskiewicz on brief) for Appellees.

PER CURIAM:

After a consideration of the record, briefs, and oral argument, we find no error. Accordingly, for the reasons stated by the district court, we affirm.

Affirmed.

MEMORANDUM OPPOSING CERTIORARI.

RESPONDENTS REPRESENT THE FOLLOWING TO THIS COURT:

1. The decision by the United States District Court For the Southern District of West Virginia in this action was entered on June 5, 1972 and is reported at 344 F. Supp. 1141.

2. The United States Court of Appeals For the Fourth Circuit affirmed that decision and adopted the opinion of the district court, entering its judgment on April 17, 1973. That decision is cited at 475 F. 2d 1399 and is accurately reproduced in the petition at pages A-13 and A-14.

3. This civil action concerns a seniority dispute arising under the terms of a collective bargaining agreement. Before this action was brought, the dispute was resolved by a decision of a labor-management joint committee, which committee was created and which decision was made *final and binding* by the mutually agreed-upon provisions of the aforementioned collective bargaining agreement. Notwithstanding, the sole objective of this action is to seek judicial review of the already-settled dispute. The detailed facts of the case are accurately set forth at pages A-1 through A-9 of the petition.

4. This case presents a controversy which plainly is governed by federal law as established by this Court in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U. S. 539 (1960); *General Drivers, Warehousemen & Helpers Local Union 89 v. Riss & Co.*, 372 U. S. 517 (1963); *Humphrey v. Moore*, 375 U. S. 335 (1964); and *Vaca v. Sipes*, 386 U. S. 171 (1966). Since the commencement of this action in February, 1970, both the petitioners and the respondents in support of their respective positions have relied consistently upon the legal principles estab-

lished in the above-cited cases. In doing so, they have admitted, and necessarily agreed upon, the applicable and controlling federal law.

5. In reaching their decisions, the courts below, as they were bound to do, correctly applied the controlling federal law, as established by this Court in the above-cited cases, to the undisputed facts of the controversy. There is no question, and none is raised in the petition, as to the appropriateness of either the application of the controlling law to the facts by the courts below, or of their interpretation of that law.

6. Furthermore, the decision in the instant case is not in conflict with the decision of any court of appeals, or of any other court, and the petition does not assert to the contrary.

7. As is apparent from the question presented in the petition, the instant dispute is one which turns upon its own special facts, and, therefore, any decision thereof will have an effect only upon the parties to this action.

8. A review of the facts which are evidenced in the record clearly reveals that there are no genuine issues as to any material facts. Consequently, pursuant to *Fed. R. Civ. P.* 56, a summary judgment disposition of this case by the courts below was both appropriate and correct.

THEREFORE, in light of the above, this case clearly does not warrant review by this Court, and thus the petition for a writ of certiorari should be denied.

Respectfully submitted,

JOHN J. MCALEESE, JR.,
CUNNIFF, BRAY & MCALEESE,
Counsel for Respondents.